

§ 423.564

42 CFR Ch. IV (10–1–07 Edition)

the Act, provisions of this subpart may, to the extent applicable under the regulations adopted by the Secretary of Labor, apply to claims for benefits under group health plans subject to the Employee Retirement Income Security Act.

§ 423.564 Grievance procedures.

(a) *General rule.* Each Part D plan sponsor must provide meaningful procedures for timely hearing and resolving grievances between enrollees and the Part D plan sponsor or any other entity or individual through whom the Part D plan sponsor provides covered benefits under any Part D plan it offers.

(b) *Distinguished from appeals.* Grievance procedures are separate and distinct from appeal procedures, which address coverage determinations as defined in § 423.566(b). Upon receiving a complaint, a Part D plan sponsor must promptly determine and inform the enrollee whether the complaint is subject to its grievance procedures or its appeal procedures.

(c) *Distinguished from the quality improvement organization complaint process.* Under section 1154(a)(14) of the Act, the quality improvement organization (QIO) must review enrollees' written complaints about the quality of services they have received under the Medicare program. This process is separate and distinct from the grievance procedures of the Part D plan sponsor. For quality of care issues, an enrollee may file a grievance with the Part D plan sponsor, file a written complaint with the QIO, or both. For any complaint submitted to a QIO, the Part D plan sponsor must cooperate with the QIO in resolving the complaint.

(d) *Method for filing a grievance.* (1) An enrollee may file a grievance with the Part D plan sponsor either orally or in writing.

(2) An enrollee must file a grievance no later than 60 days after the event or incident that precipitates the grievance.

(e) *Grievance disposition and notification.* (1) The Part D plan sponsor must notify the enrollee of its decision as expeditiously as the case requires, based on the enrollee's health status, but no later than 30 days after the date the

Part D plan sponsor receives the oral or written grievance.

(2) The Part D plan sponsor may extend the 30-day timeframe by up to 14 days if the enrollee requests the extension or if the Part D plan sponsor justifies a need for additional information and documents how the delay is in the interest of the enrollee. When the Part D plan sponsor extends the deadline, it must immediately notify the enrollee in writing of the reason(s) for the delay.

(3) The Part D plan sponsor must inform the enrollee of the disposition of the grievance in accordance with the following procedures:

(i) All grievances submitted in writing must be responded to in writing.

(ii) Grievances submitted orally may be responded to either orally or in writing, unless the enrollee requests a written response.

(iii) All grievances related to quality of care, regardless of how the grievance is filed, must be responded to in writing. The response must include a description of the enrollee's right to file a written complaint with the QIO. For any complaint submitted to a QIO, the Part D plan sponsor must cooperate with the QIO in resolving the complaint.

(f) *Expedited grievances.* A Part D plan sponsor must respond to an enrollee's grievance within 24 hours if the complaint involves a refusal by the Part D plan sponsor to grant an enrollee's request for an expedited coverage determination under § 423.570 or an expedited redetermination under § 423.584, and the enrollee has not yet purchased or received the drug that is in dispute.

(g) *Record keeping.* The Part D plan sponsor must have an established process to track and maintain records on all grievances received both orally and in writing, including, at a minimum, the date of receipt, final disposition of the grievance, and the date that the enrollee was notified of the disposition.

§ 423.566 Coverage determinations.

(a) Responsibilities of the Part D plan sponsor. Each Part D plan sponsor must have a procedure for making timely coverage determinations in accordance with the requirements of this subpart regarding the prescription drug

benefits an enrollee is entitled to receive under the plan, including basic prescription drug coverage as specified in § 423.100 and supplemental benefits as specified in § 423.104(f)(1)(ii), and the amount, including cost sharing, if any, that the enrollee is required to pay for a drug. The Part D plan sponsor must have a standard procedure for making determinations, in accordance with § 423.568, and an expedited procedure for situations in which applying the standard procedure may seriously jeopardize the enrollee's life, health, or ability to regain maximum function, in accordance with § 423.570.

(b) Actions that are coverage determinations. The following actions by a Part D plan sponsor are coverage determinations:

(1) A decision not to provide or pay for a Part D drug (including a decision not to pay because the drug is not on the plan's formulary, because the drug is determined not to be medically necessary, because the drug is furnished by an out-of-network pharmacy, or because the Part D plan sponsor determines that the drug is otherwise excludable under section 1862(a) of the Act if applied to Medicare Part D) that the enrollee believes may be covered by the plan;

(2) Failure to provide a coverage determination in a timely manner, when a delay would adversely affect the health of the enrollee;

(3) A decision concerning an exceptions request under § 423.578(a);

(4) A decision concerning an exceptions request under § 423.578(b); or

(5) A decision on the amount of cost sharing for a drug.

(c) Who can request a coverage determination. Individuals who can request a standard or expedited coverage determination are—

(1) The enrollee;

(2) The enrollee's appointed representative, on behalf of the enrollee; or

(3) The prescribing physician, on behalf of the enrollee.

§ 423.568 Standard timeframe and notice requirements for coverage determinations.

(a) *Timeframe for requests for drug benefits.* When a party makes a request for

a drug benefit, the Part D plan sponsor must notify the enrollee (and the prescribing physician involved, as appropriate) of its determination as expeditiously as the enrollee's health condition requires, but no later than 72 hours after receipt of the request, or, for an exceptions request, the physician's supporting statement.

(b) *Timeframe for requests for payment.* When a party makes a request for payment, the Part D plan sponsor must notify the enrollee of its determination no later than 72 hours after receipt of the request.

(c) *Written notice for denials by a Part D plan sponsor.* If a Part D plan sponsor decides to deny a drug benefit, in whole or in part, it must give the enrollee written notice of the determination.

(d) *Form and content of the denial notice.* The notice of any denial under paragraph (c) of this section must—

Use approved notice language in a readable and understandable form;

State the specific reasons for the denial;

Inform the enrollee of his or her right to a redetermination;

(i) For drug coverage denials, describe both the standard and expedited redetermination processes, including the enrollee's right to, and conditions for, obtaining an expedited redetermination and the rest of the appeals process;

(ii) For payment denials, describe the standard redetermination process and the rest of the appeals process; and

Comply with any other notice requirements specified by CMS.

(e) *Effect of failure to meet the adjudicatory timeframes.* If the Part D plan sponsor fails to notify the enrollee of its determination in the appropriate timeframe under paragraphs (a) or (b) of this section, the failure constitutes an adverse coverage determination, and the plan sponsor must forward the enrollee's request to the IRE within 24 hours of the expiration of the adjudication timeframe.

§ 423.570 Expediting certain coverage determinations.

(a) *Request for expedited determination.* An enrollee or an enrollee's prescribing physician may request that a Part D